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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057575
Party	Plaintiff Transgroup Express, Inc. dba Transgroup Worldwide Logistics
Correspondence Address	KEVIN J COLLETTE RYAN SWANSON & CLEVELAND PLLC 1201 THIRD AVENUE, SUITE 3400 SEATTLE, WA 98101-3034 UNITED STATES collette@ryanlaw.com, king@ryanlaw.com
Submission	Withdrawal of Cancellation
Filer's Name	Kevin J. Collette/Robert R. King
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Signature	/kjc/, /rrk/
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Attachments	TMCoExistenceAgr.pdf(225809 bytes)

TRADEMARK CO-EXISTENCE AGREEMENT

THIS TRADEMARK AGREEMENT ("Agreement") is entered into and effective as of July 18, 2013 (the "Effective Date") by and between TransGolf, Inc., a South Carolina corporation located at 317 Palm Warbler Road, Johns Island, South Carolina 29455 ("TI") and Transgroup Express Inc., a Washington corporation, *dba* Transgroup Worldwide Logistics, located at Suite 100, 18850 8th Avenue South, Seattle, Washington ("Transgroup") (collectively, the "Parties").

WHEREAS, TI is the Registrant of U.S. Trademark Registration No. 4267608 for the mark TRANSGOLF (the "TI Mark") for the following goods and services:

Class 1: Horticultural products, namely, soil amendments and fertilizer additives for turf and lawn care;

Class 35: Independent sales representatives in the field of turf, turf care products, and lawn care products, consulting in the field of golf course management;

Class 37: Consulting services in the field of golf course maintenance, providing installation of turf; and

Class 44: Horticultural processes and turf and lawn care services, namely, providing preparation and development of turfgrass and/or soil for providing an environment that encourages improved growth attributes, consulting in the field of turf and lawn care.

(collectively, the "TI Goods and Services");

WHEREAS, TI has used the TI Mark in connection with the TI Goods and Services in commerce for Class 1 since at least as early as February 24, 2012, for Classes 35, 37, and 44 since as early as 1989, and has developed goodwill and name recognition therein;

WHEREAS, Transgroup is the Applicant of U.S. Trademark Application No. 85/660979 for the mark TransGolf (the "Transgroup Mark"), filed on June 25, 2012, based upon use in connection with the following Class 39 services: Freight forwarding and freight common carrier services by air, sea, and land, namely, transport logistical services for golf tournaments and events (the "Transgroup Services");



WHEREAS, Transgroup has asserted that it has used the Transgroup Mark in connection with the Transgroup Services in commerce since at least as early as January 5, 2012;

WHEREAS, the Parties agree to the concurrent use and registration of their respective marks pursuant to the terms of this Agreement; and

WHEREAS, to avoid the unnecessary expense of litigation, the Parties now desire and intend by this Agreement to amicably resolve the dispute that presently exists between them.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Transgroup acknowledges that TI has certain rights in the TI Mark in connection with the TI Goods and Services.

2. TI acknowledges that Transgroup has certain rights in the Transgroup Mark in connection with the Transgroup Services.

3. Transgroup agrees that it will not object to the registration or renewals of the TI Mark and TI shall have the right to use, apply to register and/or register the TI Mark, for the TI Goods and Services, pursuant to the terms of this Agreement.

4. TI agrees that it will not object to the registration or renewals of the Transgroup Mark and Transgroup shall have the right to use, apply to register, and/or register the Transgroup Mark for the Transgroup Services, pursuant to the terms of this Agreement.

5. The Parties agree to make good faith efforts to undertake reasonable steps to avoid any conflicts and to prevent any future conditions or developments that may create public confusion concerning the Parties' respective goods and/or services offered under their respective marks.

6. Neither Party hereto shall assert a claim that the other Party has committed a breach of, or default on, this Agreement, or has failed to comply with any provision of this Agreement, unless the Party making such an assertion shall have provided to the other Party thirty (30) days' written notice of such breach, default, or failure to comply and such other Party shall not have brought itself into compliance with this Agreement within the allotted time.

 

7. This Agreement shall bind and inure to the benefit of the Parties and their respective parents, subsidiaries, affiliates or other related companies, assignees, licensees, officers, directors, employees, agents, partners, representatives, successors and assigns or any other users of the respective trademarks authorized by same.

8. Both Parties to this Agreement may license or assign their respective rights hereunder, in whole or in part, provided that such license, assignment, or other agreement does not conflict with the provisions of this Agreement and that the Parties to same ratify and expressly agree to be bound by the terms hereof.

9. This Agreement is effective throughout the world but specifically in the United States and constitutes the entire agreement between the Parties with respect to their use and registration of their respective trademarks and supersedes any previous agreement, negotiations and discussions, whether written or oral, between the Parties regarding this subject matter.

10. The Parties agree and confirm that this Agreement will apply to use and registration of each Party's respective marks worldwide.

11. The Parties agree that the Parties' respective use and registration of their marks pursuant to this Agreement is not likely to cause confusion because of the differences between the Party's respective businesses.

12. Each Party agrees to reasonably cooperate with the other Party in executing such instruments and other documents at the requesting Party's expense as may be required to register that requesting Party's mark with the United States Patent and Trademark Office and/or with any other foreign trademark office.

13. No future waiver, alteration, amendment, modification, or other change of any of the terms and conditions of this Agreement, whether oral, through the Parties' course of performance, course of dealing or course of conduct, or manifested in any other way, shall be binding or effective unless agreed to in writing and signed by authorized representatives of the Parties. Any such written waiver shall be effective only in the specific instance and for the purpose given.

14. This Agreement shall be construed without regard to any presumption or any other rule requiring construction against the Party causing it to be drafted.

 

15. The Parties acknowledge that they have read and fully understand the terms of this Agreement and have had it reviewed by their counsel, with adequate opportunity and time for such review, that this Agreement has been the result of negotiations, and that they are fully aware of its contents and its legal effect. The Parties enter into this Agreement freely and voluntarily. The Parties acknowledge that, except as expressly set forth herein, no representations of any kind or character have been made to them to induce their execution of this Agreement.

16. Notice under this Agreement shall be served via certified mail - return receipt requested, or via federal express, to the undersigned individuals at the address first listed above. Each Party shall promptly give written notice to the other of any change in the name or address to which notices to it are to be sent.

18. This Agreement may be executed by the Parties hereto in two counterparts, both of which shall be deemed an original and shall be one and the same document.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have caused this Agreement to be signed as of the Effective Date.

TransGolf, Inc.

Transgroup Express, Inc.

Louise H. Frye

Title: Treasurer

Date: July 18, 2013.

[Signature]

Title: Executive Director - Corp. Operations

Date: August 9, 2013